IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7588 OF 2002

Ashok Leyland Finance Ltd. ...Petitioner

Versus

Sou.Priya Kishor Keswani ...Respondent

Smt Shakuntala Joshi for the Petitioner.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 07, 2007.

P.C.:

1. Heard Advocate for the Petitioner. By order dated 13th December, 2002 notice was ordered to be issued for final disposal at admission stage. Office noting shows that the Respondent is duly served and is represented by an Advocate. None appears for the Respondent.

2. The Petitioner is the original Defendant in a suit filed by the Respondent. The Petitioner is a finance company. The Respondent had borrowed certain amount from the Petitioner and had acquired a truck under a Hire Purchase Agreement. On the basis of terms and conditions of the Agreement executed by and between parties the Petitioner took over possession of the truck on 14th June, 1998. A suit was filed by the Respondent

for declaration and injunction. The challenge was to the act of the Petitioner of taking possession of truck. One of the prayers in the suit was for delivery of the truck. After a full trial, the trial Court dismissed the suit by Judgment and Decree dated 23rd December, 1999.

3. An Appeal was preferred by the Respondent before the District Court for challenging the Judgment and Decree. On an application made at Exhibit 8 by the Respondent, by order dated 21st September, 2001 the learned Additional District Judge directed the Petitioner to produce the truck before the Court. This is the order impugned in this Writ Petition under Article 227 of the Constitution of India.

4. After having heard the submissions of the learned Advocate for the Petitioner, I am of the view that such a drastic order of mandatory nature could not have been passed by the Appellate Court during the pendency of the Appeal. The main prayer in the suit filed by the Respondent was for mandatory injunction directing the Petitioner to deliver custody of the truck to the Respondent. The suit was dismissed after a

complete trial. A mandatory order has been passed by the Appellate Court directing the Petitioner to produce the truck before the Court. The said order could not have been passed at interlocutory stage during the pendency of the Appeal considering the facts and circumstances of the case. The order passed by the Appellate Court has been stayed by this Court by order dated 13th December, 2002. The said order deserves to be quashed and set aside. Hence, I pass the following order:

(i) Rule is made absolute in terms of prayer clause (b).

(ii) It is made clear that all contentions of the parties in the Appeal, if pending, are expressly kept open. The Appeal will be decided on its own merits without being influenced by the observations made in the impugned order as well as this order.

(iii) There will be no order as to costs.

JUDGE